

Date: 20080618

Docket: T-614-07

Citation: 2008 FC 764

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

WALTER SCHNEIDER

Respondent

REASONS FOR JUDGMENT

HUGHES J.

This is an application made by the Attorney General on behalf of the Minister of Human Resources and Skills Development to set aside a decision of the Commissioner of Review Tribunals dated March 12, 2007 whereby the Respondent, Walter Schneider, was granted an extension of time under the provisions of Section 82 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 to submit an appeal from a decision of the Minister, communicated by letter to the Respondent dated, June 16, 2004 to deny Canada Pension Plan benefits to him. I am dismissing the application without costs.

The text of the decision whereby the Commissioner extended the appeal period is as follows:

Thank you for your letter of December 12, 2006 in which you explained the reasons for the delay in submitting your appeal in writing. Based on the explanations contained in your letter, I am satisfied that the circumstances warrant that I exercise my discretion under s. 82 of the Canada Pension Plan and extend the appeal period.

Specifically, I am relying on the information contained in your letter that, in June 2004, you had a telephone discussion with an employee of Human Resources Development Canada and were led to understand from that conversation that your appeal had been registered by your indicating verbally to the employee in question that you wished to appeal. It may be that there was a miscommunication but I am prepared to accept that you legitimately believed at the time that no further action was required on your part in order to perfect your appeal.

This appeal will be scheduled for hearing shortly. You can expect to receive a Notice of Hearing later this Spring.

The Minister argues that the Decision to grant the extension should be set aside on three grounds:

1. The Commissioner failed to consider the criteria for extensions of time as set out in jurisprudence such as *Grewel v. Canada*, [1985] 2 F.C. 263 namely:
 - a. a continued intention to pursue the matter
 - b. a reasonable explanation for the delay
 - c. demonstration of an arguable case, and
 - d. no prejudice to the other party.
2. That had such criteria been applied, the extension would not have been granted; and
3. Inadequacy of reasons.

STANDARD OF REVIEW

Since the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 a fresh look at the question of standard of review has been taken. There are two standards, reasonableness when considering decisions as to factual or mixed fact and law where the two are not readily separable, and correctness where the decision deals with matters such as law and jurisdiction. When it comes to reasonableness, the Court is not to substitute its own view of matters but instead must ask if the decision reached considered the relevant facts and reached a defensible conclusion based on those facts.

Here we are dealing with a decision of the Commission who is empowered under section 82 (1) of the *Canada Pension Plan* to allow a longer period than 90 days to submit an appeal from the Minister respecting certain pension benefits. Such a decision is largely administrative in nature and, while requiring consideration of criteria such as those of *Grewel* supra, the Commissioner must look at the factual circumstances of each case to make a determination which, as such, is a matter of mixed fact and law. The determination is one of an administrative nature such that it should be reviewed on a standard of reasonableness with substantial deference afforded to the Commissioner.

I am aware of the decision of my brother Judge, Lemieux J. in *Canada (Attorney General) v. Pentney* 2008 FC 96 particularly at paragraphs 26 and 27. I believe that we do not differ. In law, consideration must be given to criteria such as *Grewal* but perhaps with the general caution that the principle object is to do justice, as will be discussed below and the provision of some reasons must be made. However the consideration given to the facts and extent of reasons are not matter of law but of fact or mixed fact and law and are to be dealt with on the basis of reasonableness. As Snider J. said in *Canada (Minister of Human Resources Development) v. Gaffellero*, 2005 FC 883 at paragraph 4 a decision to extend time is highly discretionary. She was considering whether to apply patent unreasonableness or unreasonableness simpliciter. Since *Dunsmuir* we don't need to distinguish between the two.

As Thurlow CJ said in giving the decision of the Court in *Grewal* supra at page 5 of the print-out version, the underlying consideration to bear in mind in an application of this kind is to do justice between the parties in granting an extension or not.

ANALYSIS

A decision by a tribunal which is empowered by statute to grant an extension of time is, as stated, highly discretionary and is intended to do justice between the parties.

It is clear from the decision at issue here that the Commissioner had before him correspondence from Mr. Schneider and the recommendations from his staff. The Applicant's factum filed in this case suggests that the Minister should have been given an opportunity to review the material as well and make submissions however the factum acknowledges and the Minister's Counsel agrees that the Commissioner may proceed *ex parte* and has no obligation to involve the Minister.

It is apparent from the decision that the Commissioner did not stipulate the four criteria ascribed to *Grewal* and that the reasons are not lengthy. It would place an unreasonable burden on the Commissioner to set out detailed reasons and articulate jurisprudence or criteria derived from jurisprudence and provide a detailed review as to the application of all facts to each criteria. The requirements to do so may be different in contested matters or where the person most likely to be detrimentally affected is not legally advised or sophisticated. Here, however, the Minister is not engaged in the controversy at this time and is well advised and legally sophisticated.

Even if one were to reduce *Grewal* to four criteria, which given the reasoning of Thurlow CJ one should not, the objective being to do justice and not to create a checklist, and apply them to the facts in the present case it cannot be said that the decision to grant an extension was unreasonable. The delay of some two years, though somewhat lengthy, was explained by reason of poor health and miscommunication. The intention to appeal is evident. The Minister has provided no evidence as to actual prejudice, only legal argument. In discussion with Counsel for the Applicant at the oral hearing it appears that the Respondent Mr. Schneider may have some chance of success, although I

do not express whether it is a good or certain chance, with respect to the pre-December 1997 period, if applicable. Mr. Schneider is cautioned that he must provide proper evidence and submissions in this regard at the proper time and place.

Therefore, the decision to extend the time for appeal was reasonable and should not be set aside. Mr. Schneider represented himself, with assistance from his wife, and says he incurred no expenses with regard to this application, therefore no costs will be awarded.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-614-07

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v. WALTER SCHNEIDER

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: June 18, 2008

REASONS FOR JUDGMENT: HUGHES J.

DATED: June 18, 2008

APPEARANCES:

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Walter Schneider FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice FOR THE APPLICANT
Ottawa, Ontario

Walter Schneider FOR THE RESPONDENT